

Senate Bill No. 704

CHAPTER 480

An act to repeal Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code, and to add Section 41606 to the Health and Safety Code, relating to air quality.

[Approved by Governor September 22, 2003. Filed
with Secretary of State September 22, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 704, Florez. Air quality: agricultural burning.

(1) Under existing law, each air pollution control district and air quality management district is authorized to establish a permit system that requires, except as specified, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants, the person obtain a permit from the air pollution control officer of the district.

Existing law until January 1, 2004, establishes the Agricultural Biomass-to-Energy Incentive Grant Program, which permits air districts, as defined, to apply to the Technology, Trade, and Commerce Agency to receive grants to provide incentives to facilities that convert qualified agricultural biomass, as defined, to fuel.

Under the Public Utilities Act, the Public Utilities Commission requires electrical corporations to identify a separate rate component to fund in-state operation and development of existing and new and emerging renewable resources technologies. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing law requires specified electrical corporations to collect specific amounts to support in-state operation and development of existing and new and emerging renewable resources technologies. Existing law also requires the State Energy Resources Conservation and Development Commission (Energy Commission) to transfer funds collected for in-state operation and development of existing and new and emerging renewable resources technologies into the Renewable Resource Trust Fund, a continuously appropriated fund, to accomplish these purposes.

This bill would repeal the Agricultural Biomass-to-Energy Incentive Grant Program, and instead, would require the Energy Commission, upon determining the project is eligible for funding, to provide incentives to a facility, as defined.

(2) This bill would require the Energy Commission, pursuant to an item of the Budget Act of 2003, to allocate \$6,000,000 from the Renewable Resource Trust Fund for the 2003–04 fiscal year, to provide incentives to a facility, to increase its utilization of qualified agricultural biomass.

(3) The bill would provide that it would become operative only if SB 705 is chaptered and becomes effective.

The people of the State of California do enact as follows:

SECTION 1. Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code is repealed.

SEC. 2. Section 41606 is added to the Health and Safety Code, to read:

41606. (a) (1) It is the intent of the Legislature to reduce air pollution from open field burning in the state and to improve air quality and protect the public health through new incentives for biomass facilities to increase their use of agricultural waste that would otherwise be burned in open fields in the state.

(2) It is the further intent of the Legislature that the initial incentives paid pursuant to this section provide an effective incentive for the use of qualified agricultural biomass purchased from July 1, 2003, through December 31, 2003, inclusive, in order to maximize air quality benefits during the 2003–04 fiscal year.

(b) For purposes of this section:

(1) “Qualified agricultural biomass” means agricultural residues that are purchased after July 1, 2003, that historically have been open-field burned in the jurisdiction of the air district from which the agricultural residues are derived, as determined by the air district, excluding urban and forest wood products, that include either of the following:

(A) Field and seed crop residues, including, but not limited to, straws from rice and wheat.

(B) Fruit and nut crop residues, including, but not limited to, orchard and vineyard pruning and removals.

(2) “Facility” means any facility located in California that meets all of the following criteria:

(A) As of July 1, 2003, converted and continues to convert qualified agricultural biomass to energy.

(B) Is permitted with best available control technology to reduce emissions, has emissions control equipment in good working order, and is in compliance with its operating permit, as determined by the air pollution control district or air quality management district in which the facility operates.



(C) Demonstrates a significant net increase in utilization of qualified agricultural biomass as compared to usage without grant moneys pursuant to this section. A “significant net increase” means an increase of at least 10 percent in purchases of qualified agricultural biomass above the average annual tonnage purchased by the facility in the previous five years of operation prior to the implementation of the Agricultural Biomass-to-Energy Incentive Grant Program pursuant to former Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code, as repealed by the act adding this section.

(c) (1) The State Energy Resources Conservation and Development Commission shall, upon determining that a facility is eligible for funding, provide incentives to the facility, consistent with this section.

(2) The State Energy Resources Conservation and Development Commission shall complete the issuance of incentive payments for qualified agricultural biomass purchased from July 1, 2003, through December 31, 2003, inclusive, within 90 days of the effective date of this section.

(3) In providing incentives pursuant to this section, the State Energy Resources Conservation and Development Commission shall provide incentive payments in the amount of ten dollars (\$10) for each ton of qualified agricultural biomass received by a facility and converted into energy. The State Energy Resources Conservation and Development Commission may increase the incentive payment for types or sources of qualified agricultural biomass that require greater incentives to achieve meaningful increases in usage by facilities, as determined by the State Energy Resources Conservation and Development Commission.

(4) Notwithstanding any other provision of law, the receipt of incentives pursuant to this section does not make a facility ineligible for any other production subsidy, rebate, buydown, or other incentive funded through electricity surcharges, except that receipt of incentives funded through electricity surcharges shall preclude receipt of biomass-to-energy incentives financed by the General Fund.

(5) The State Energy Resources Conservation and Development Commission, in consultation with the California Environmental Protection Agency, may adopt guidelines governing the incentives authorized under this section at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days’ written notice to the public. The public notice of meetings required by this paragraph may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. Adoption of guidelines



shall not delay the timing of the payment of incentives that are required by paragraph (2).

(6) Awards made pursuant to this section are grants, subject to appeal to the State Energy Resources Conservation and Development Commission upon a showing that factors other than those contained in this section, and any guidelines adopted pursuant to this section, were a substantial factor in making the award. Any actions taken by an applicant to apply for, become, or remain eligible for an award, shall not be the rendering of goods, services, or a direct benefit to the State Energy Resources Conservation and Development Commission.

(d) Facilities receiving incentive payments pursuant to this section are not eligible to receive emission reduction credits for any qualified agricultural biomass for which a facility has received an incentive payment. Generators or suppliers of qualified agricultural biomass may not receive emission reduction credits for any qualified agricultural biomass for which a facility has received an incentive payment. For purposes of this section, “emission reduction credits” means a credit for a reduction in the emission of an air contaminant that is banked and is available to offset increases in emissions pursuant to Section 40709, and the regulations adopted pursuant to that section.

SEC. 3. The State Energy Resources Conservation and Development Commission shall allocate six million dollars (\$6,000,000) from the Renewable Resource Trust Fund, as provided in Provision 1 of Item 3360-001-0382 of the Budget Act of 2003, Chapter 157 of the Statutes of 2003, for the 2003–04 fiscal year, to provide incentives to a facility, as defined in Section 41606 of the Health and Safety Code, to increase its utilization of qualified agricultural biomass as provided in Section 41606 of the Health and Safety Code.

SEC. 4. This act shall become operative only if Senate Bill 705 of the 2003–04 Regular Session is chaptered and becomes effective.

